



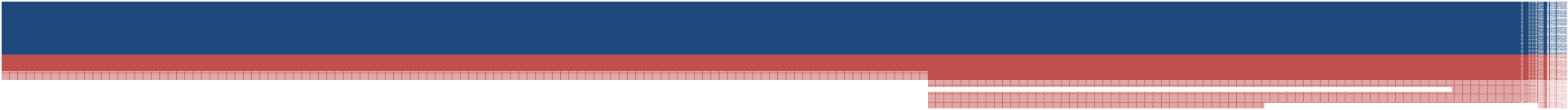
Ethics Briefing for **Special Government Employees** Serving on **NASA Advisory Committees**

Ethics for NASA SGEs
March 2010



Service on NASA Advisory Committees

- Appointment as Special Government Employee (SGE)
- Defined at 18 U.S.C. 202(a)
 - Anyone who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for a period not to exceed 130 days out of any 365 days
 - Includes advisory committees

- 
- Principles of Ethical Conduct (5 CFR 2635):
 - Public service is a public trust
 - May not have conflicting financial interests
 - May not improperly use nonpublic information
 - Avoid even the appearance of impropriety
 - Status as SGE
 - Equivalent to being an insider
 - Subject to civil service ethics rules
 - Subject to post-employment restrictions

Laws/Regulations

- Criminal Statutes
 - Financial Conflicts of Interest (18 U.S.C. 208 & 201)
 - Representational Conflicts of Interest (18 U.S.C 203 & 205)
 - Limits on Representation when you leave government service (18 U.S.C. 207)
- Regulations
 - Standards of Conduct (5 CFR 2635)
 - “Impartiality”

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Laws/Regulations (cont'd)

Federal Advisory Committee Act (5 USC Appx. 2)

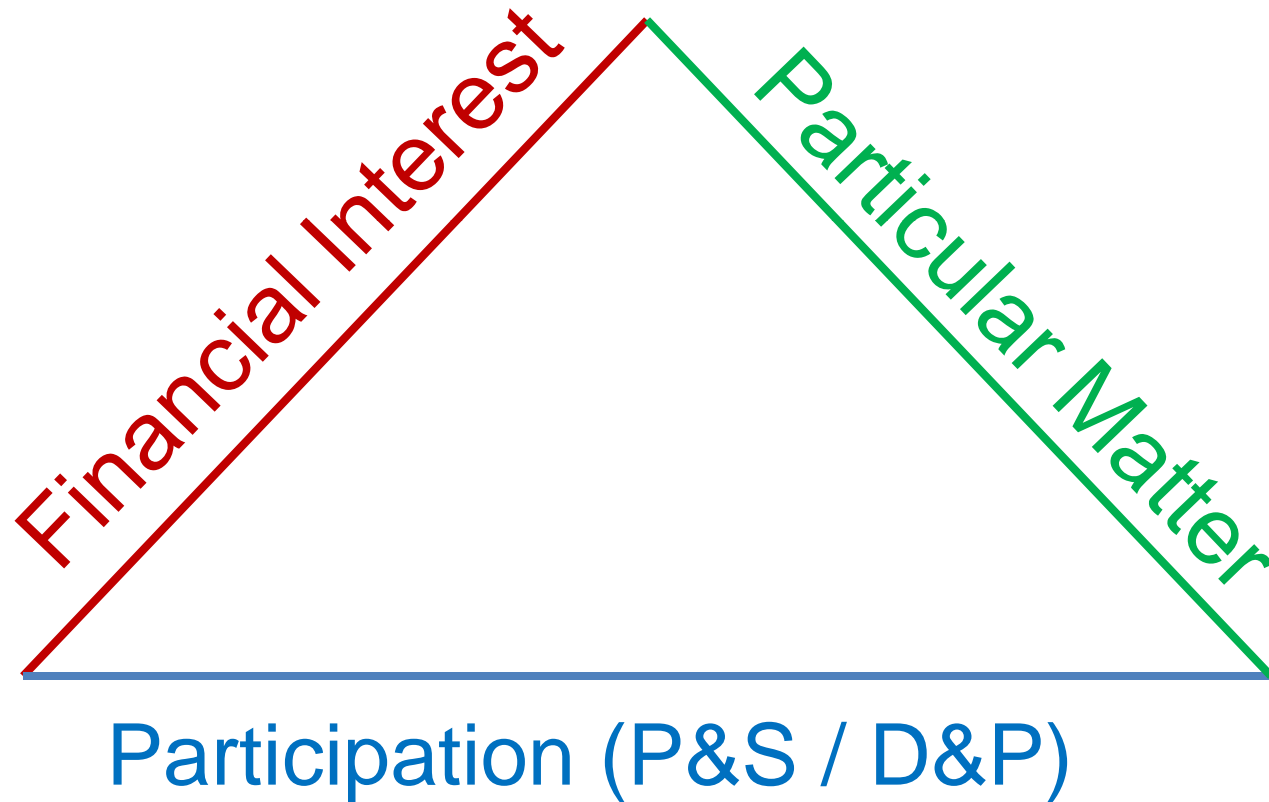
[A]dvisory committees shall be utilized solely for **advisory functions**. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations **shall be made solely by... an officer of the Federal Government**.

Conflicts of Interest 18 U.S.C. 208

An employee is prohibited from:

- participating personally and substantially
- in any particular matter in which
- the employee has a financial interest,
- if the particular matter will have a direct and predictable effect on that interest.

“The Conflict Triangle”



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Leg 1: Financial Interests

- Holdings: Stocks, Bonds (retirement accounts)
- Relationships: Employment, consulting arrangements
- Agreements: Grants, contracts
- Interests through ownership, partnership, LLC (limited liability corps.)

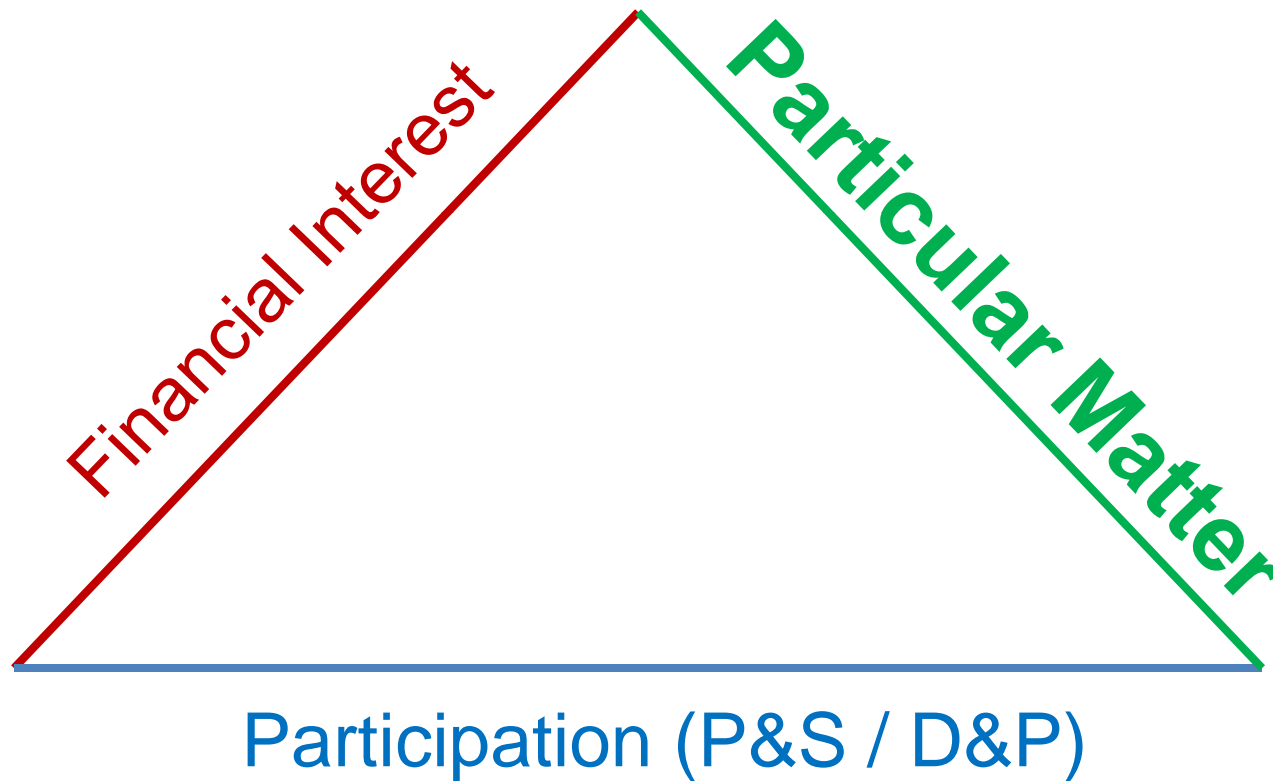
Imputed Financial Interests

- Spouse
- Minor Child
- General Partner
- Organization which the individual serves as officer, director, trustee, general partner or **employee**
- Person or organization with which the employee is negotiating or has an arrangement for prospective employment

Financial Disclosure

- 2 types:
 - Public (SF-278)
 - Confidential (OGE-450)
- Purpose: Identify potential conflicts of interest to preserve integrity of committee's work
- **Only one leg of the triangle**

“The Conflict Triangle”



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Leg 2: Particular Matter

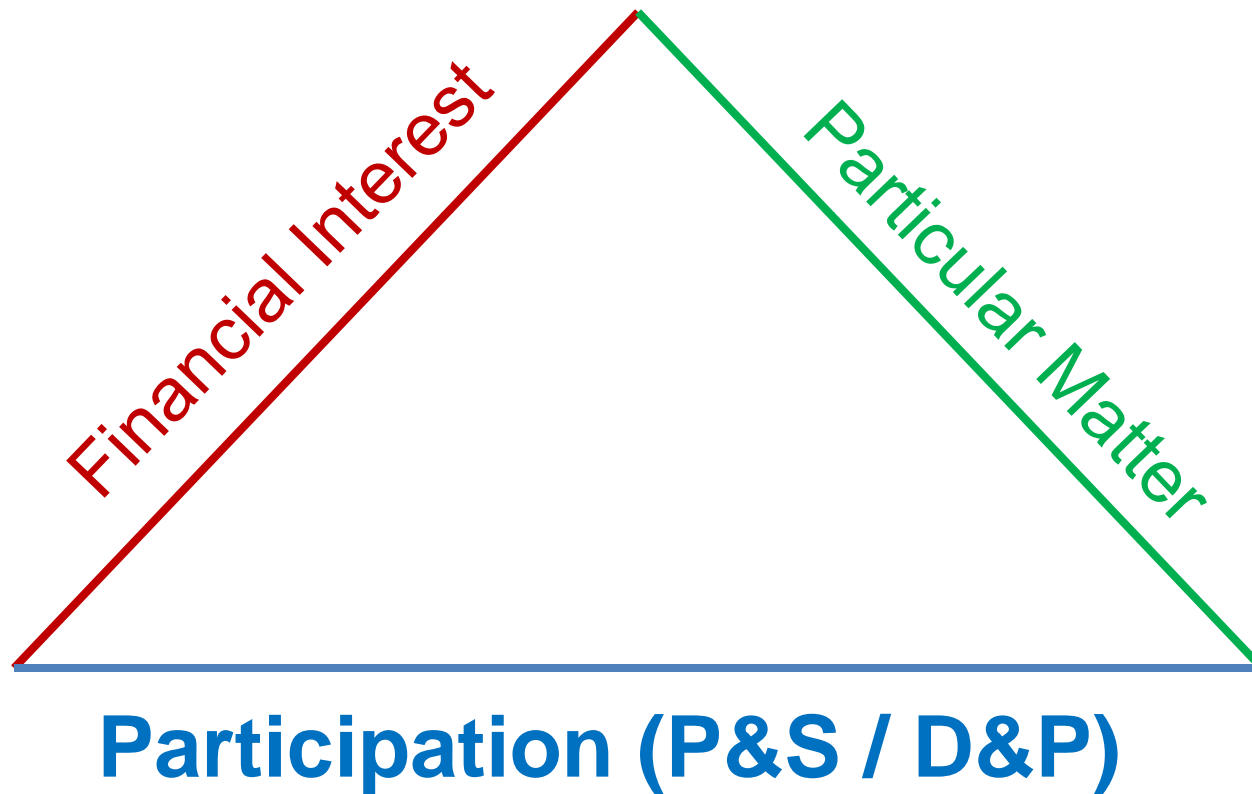
- Deliberations, decisions, or actions that are focused upon the interests of:
 - Specific persons or entities (EX: contract, grant, agreement)
 - Identifiable class of persons or entities (EX: industry)
- NOT focused on:
 - Broad policy options or considerations
- **Contracts and Grants most common at NASA**

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“The Conflict Triangle”



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Leg 3: Participation

- Personal and Substantial participation in a particular matter
- If the matter will have a Direct and Predictable effect on a financial interest
- *Compare to role of NASA Advisory Committees*

Impartiality & “Covered Relationships”

- “Impartiality” regulation has effect of expanding imputed interests to following:
 - Former employer (past 12 mos.)
 - Close personal relationship or member of household
 - Person/company that employs spouse/family member
- *Any relationship that would cause a reasonable person to question your impartiality*

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Avoiding Conflicts

“Breaking the Triangle”

Leg 1: Financial Interests

- Sell holdings? (often a difficult option)
 - Regulatory exemption < \$15K
- Terminate relationships - employment / client
 - Still have “impartiality” concerns



Avoiding Conflicts

“Breaking the Triangle”

Leg 2: Particular Matter

- Advisory Committees can keep discussions high-level
- Avoid specific contracts & grants
- Be aware of actions that could affect finite & discreet groups of individuals & organizations



Avoiding Conflicts (cont'd)

“Breaking the Triangle”

Leg 3: Participation

- Keep discussions high-level
- Recusal if necessary
 - Notify Executive Director / Secretary
 - Note in Minutes
 - Best practice is to leave room



Avoiding Conflicts (cont'd)

“Breaking the Triangle”

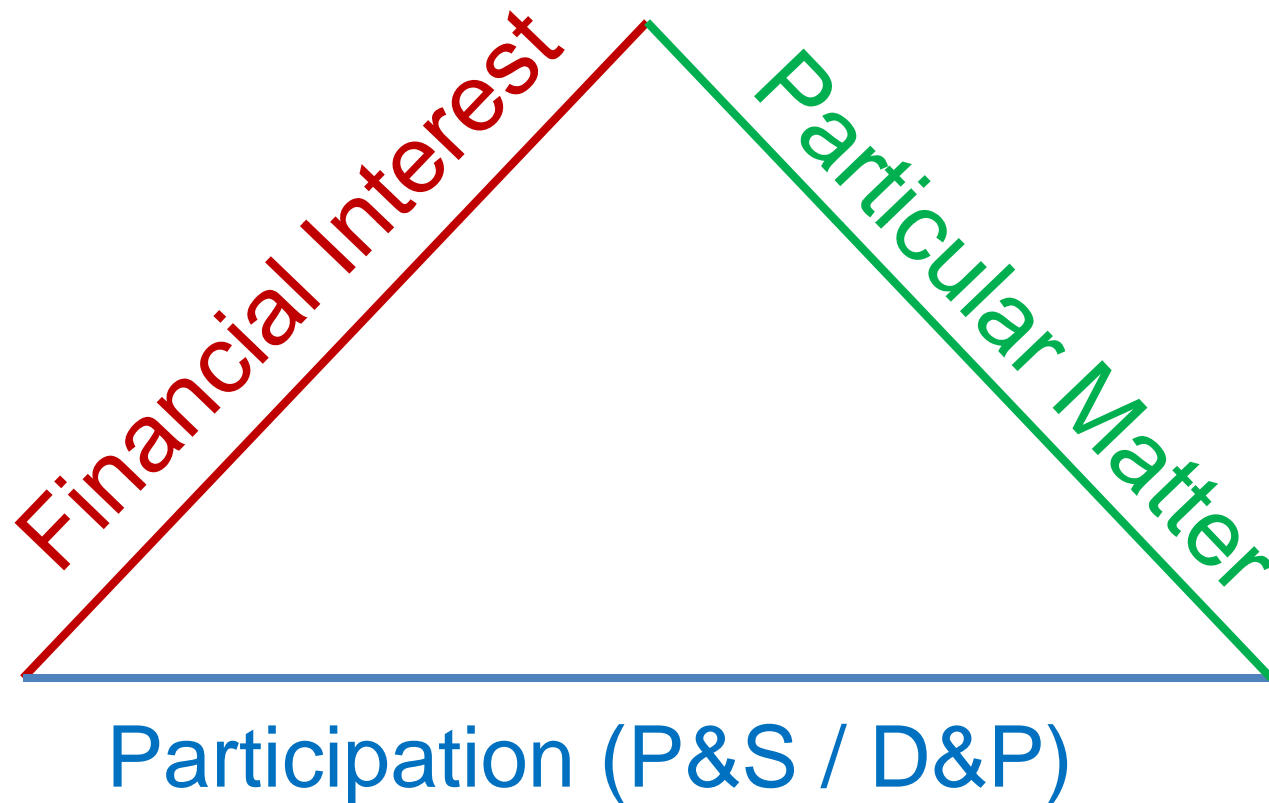
- **Forecast** potential conflicts by comparing agenda with financial interests & covered relationships
- **Communicate** with the Executive Dir/Sec and Chair about potential conflicts and concerns
- **Take Care** when committee discussion/deliberation begins to approach particular matters
- **Consult** OGC via the Exec Dir/Sec

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“The Conflict Triangle”





Representational Activities (18 USC 203/205)

- Prohibits representational activities before the Government
- Applies to SGEs only if:
 - Matter involves specific parties (e.g., contracts, grants) and either
 - SGE was personally and substantially involved in the particular matter as part of Government service, or
 - SGE served *more than 60 days* in the previous 365, and matter is pending before the same agency

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Post-Employment Restrictions 18 USC 207

Prohibits representing back to the Agency on a particular matter when:

- The U.S. is a party or has a direct and substantial interest,
- The employee participated personally and substantially in the matter while he was a government employee, *and*
- The matter involved specific parties at the time of his participation.

Post Employment Restrictions (Cont'd)

- Subject to a 1 year representational “cooling off” period if
 - Rate of pay as SGE was over a certain amount (\$153,105 in 2009), and
 - You served 60 days or more as SGE in previous year
- Restriction on appearances before or communications to NASA (on behalf of another entity)



Standards of Conduct

- Gift Rules
 - Anything having monetary value
 - Prohibited Sources
 - Official Position
- Exceptions
 - Outside business activities
 - Personal relationships
 - \$20/\$50 rule



NASA Ethics Officials

- Michael C. Wholley, General Counsel
 - Designated Agency Ethics Official
- Adam Greenstone, Ethics Team Lead
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